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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15
16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 vs.

20 JAMMIN' JAVA CORP., dba MARLEY
21 COFFEE, SHANE G. WHITTLE, WAYNE
22 S. P. WEAVER, MICHAEL K. SUN, RENE
23 BERLINGER, STEPHEN B. WHEATLEY,
24 KEVIN P. MILLER, MOHAMMED A. AL-
25 BARWANI, ALEXANDER J. HUNTER,
26 and THOMAS E. HUNTER,

27 Defendants.
28

Case No. 2:15-cv-08921 SVW (MRWx)

**STIPULATION AND [PROPOSED]
ORDER UNDER FED. R. EVID. 502(d)
REGARDING
DISCLOSURE OF PROTECTED
INFORMATION**

1 Plaintiff United States Securities and Exchange Commission ("SEC") and Defendants
 2 Jammin' Java Corp. ("Jammin' Java"), Shane Whittle, Wayne Weaver, Michael K. Sun, Rene
 3 Berlinger, Stephen B. Wheatley, Kevin Miller, Mohammed Al-Barwani, Alexander J. Hunter,
 4 and Thomas E. Hunter ("Defendants"), by and through their counsel, hereby stipulate to the
 5 following terms, and the Court hereby **ORDERS AS FOLLOWS:**

6 **1. No Waiver by Disclosure.**

7 (a) Subject to the provisions of this Stipulation and Order, the disclosure of the
 8 following information in this litigation ("Litigation") will not constitute or be deemed a waiver
 9 or forfeiture of any claim, protection, privilege or immunity, in this or any state or federal
 10 proceeding, regardless of the circumstances of the disclosure:

- 11 (1) information that either party claims to be subject to the attorney-
 12 client privilege or the work product protection;
- 13 (2) information that the SEC claims is subject to the deliberative process
 14 privilege or law enforcement privilege;
- 15 (3) information that the SEC claims was supplied by a foreign
 16 government or foreign law enforcement agency on the condition
 17 that it not be produced to third-parties, pursuant to a statute, rule,
 18 regulation, or memorandum of understanding; and
- 19 (4) Information subject to confidentiality provisions of Section 21F
 20 and/or Section 24 of the Securities Exchange Act of 1934 and rules
 21 promulgated thereunder.

22 Such information is collectively referred to in this Stipulation and Order as "Protected
 23 Information."

24 (b) Notwithstanding Paragraph 1(a), "Protected Information" shall not include
 25 information that:

- 26 (1) was already produced during or in connection with an SEC
 27 investigation;
- 28 (2) was legally available from a source other than the party that

1 produced the information (“Disclosing Party”);

2 (3) the party that is the recipient of the information (“Receiving Party”)
3 thereafter lawfully receives from a nonparty without restriction as to
4 disclosure, provided such nonparty had the right to make the
5 disclosure; or

6 (4) the Receiving Party is legally prohibited from treating as Protected
7 Information.

8 **2. Notification Requirements; Best Efforts of Receiving Party.**

9 (a) Upon learning of the disclosure of Protected Information, Disclosing Party must
10 promptly provide written notification to the Receiving Party that it disclosed the Protected
11 Information without intending a waiver by the disclosure (“Notification”).

12 (b) Upon such Notification, the Receiving Party promptly must make best efforts to
13 identify and return, and sequester or destroy – or, in the case of electronically stored
14 information, delete – the Protected Information and any reasonably accessible copies it has.
15 The Receiving Party shall further immediately cease reviewing, disseminating, or otherwise
16 using the Protected Information.

17 (c) Within three business days of the Notification, the Receiving Party shall provide
18 written notice to the Disclosing Party that it has taken the actions set forth in Paragraph 2(b).

19 (d) Upon completing the steps set forth in Paragraph 2(b), the Receiving Party shall no
20 longer be deemed to have the Protected Information in its possession, custody or control.

21 (e) The Receiving Party shall take the steps set forth in this Paragraph even if it intends
22 to contest the Disclosing Party’s designation of Protected Information.

23 **3. Process for Contesting Claim of Privilege or Protection.**

24 (a) Notwithstanding anything set forth in this Stipulation and Order, at all times the
25 Disclosing Party retains the burden of establishing the privileged or protected nature of the
26 Protected Information.

27 (b) After the Notification, the Receiving Party may seek a written explanation from the
28 Disclosing Party articulating in detail why the Disclosing Party believes the Protected

1 Information is privileged or protected. The Disclosing Party shall provide the Receiving Party
2 with such a written explanation within three business days.

3 (c) The Receiving Party may move to compel disclosure of the information (“Motion to
4 Compel”). In the Motion to Compel, the Receiving Party may petition the Court for an *in*
5 *camera* review of the Protected Information. In the Motion to Compel, the Receiving Party will
6 not: (1) disclose the information that the Producing Party claims to be privileged or protected,
7 or (2) assert as grounds for compelling disclosure the fact or circumstances of the disclosure.

8 **4. Applicability.**

9 (a) The provisions of Federal Rule of Evidence 502(b)(2) are inapplicable to the
10 production of Protected Information under this Stipulation and Order.

11 (b) To the extent Federal Rule of Evidence 502(d) is found not to apply to categories of
12 “Protected Information” set forth in Paragraph 1(a) of this Stipulation and Order, the parties to
13 this Stipulation and Order hereby acknowledge their understanding that they can nonetheless
14 properly and legally extend the scope of this Stipulation and Order to include such categories
15 as Protected Information, and that they are estopped from arguing otherwise in a Motion to
16 Compel.

17 (c) This Stipulation and Order is intended to bind, and does bind, both the signatories to
18 this Stipulation and Order, and non-parties to this litigation, including in any other federal or
19 state proceeding.

20 (d) This Stipulation and Order does not preclude a party from voluntarily waiving
21 privilege or protection. In the event the Disclosing Party uses or indicates it may use
22 information produced under this Stipulation and Order to support a claim or defense, the
23 provisions of Federal Rule of Evidence 502(a) shall apply.

24 (e) Nothing set forth in this Stipulation and Order is intended to supersede any laws that
25 impose record-keeping obligations on the SEC, including without limitation the Freedom of
26 Information Act, 5 U.S.C. § 552, *et seq.*

27 (f) As long as information is in the SEC’s possession, custody or control, the SEC may
28 share such information with any other federal, state, or foreign law enforcement authority,

1 agency or department. Nothing set forth in this Stipulation and Order shall limit the SEC's
 2 right to do so. In this regard, the Commission often makes its files available to other
 3 governmental agencies, particularly United States Attorneys and state prosecutors. Information
 4 supplied by Defendants and others during this Litigation may be made available to such
 5 agencies where appropriate.

6 (g) Nothing in this Stipulation and Order overrides an attorney's ethical responsibilities
 7 to refrain from examining, and from providing notice to a Disclosing Party of the existence of,
 8 a document that the attorney knows or reasonably should know to be privileged or protected.
 9 In that event, the Receiving Party should promptly comply with the procedures set forth in
 10 Paragraphs 2(b) and 2(c) concerning notification, segregation and return of Protected
 11 Information.

12 **STIPULATED AND AGREED TO** on the 8st of June, 2016.

13 Dated: June 8, 2016

/s/ Timothy S. Leiman

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20 Dated: June 8, 2016

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17 **IT IS SO ORDERED** on the ____ day of June, 2016.

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20 United States District Court Judge